Supreme Court, U.S.
FILED
FEB 3 1992
OFFICE OF THE CLERK

(3)

NO. 91-937

IN THE

Supreme Court of the United States

OCTOBER TERM, 1991

PETER S. STEIGERWALD,
Petitioner,

v.

ANITA RODEHEAVER, ET AL.,
Respondents

Petition For A Writ Of Certiorari To The Court Of Appeals For The Fourteenth Court Of Appeals District Of Texas

PETITIONER'S REPLY BRIEF

C. CHARLES DIPPEL
1415 Louisiana, Suite 2550
Houston, Texas 77002
(713) 658-0808
(713) 658-8467 (Fax)
Attorney for Petitioner

Alpha Law Brief Co. • 6113 Aletha Lane • Houston, Texas 77081 • (713) 981-9000

TABLE OF CONTENTS

Page

REPLY.....1
CONCLUSION.....4
TABLE OF AUTHORITIES.....ii

TABLE OF AUTHORITIES

CASES

Harris County v. Wilkinson, 540 SW2d 541 (Tex. Civ.App.-Houston [14th District] 1976, writ ref'd n.r.e) 2

Howlett v. Rose, _____U.S._____, 110 S. Ct. 2430, 110 L.Ed.2d 332 (1990)..... 3

Kentucky v. Graham, 473 U.S. 159, 87 L.ED.2d 114, 105 S.Ct. 3099, (1985)..... 2

Martinez v. California, 444 U.S. 27, 62 L.ED 2d 481, 100 S.Ct. 553 (1980)..... 3

Sellers v. Harris County, 483 SW2d 242 (Tex. 1972)..... 2

Webb's Fabulous Pharmacies, Inc. v. Beckwith, 449 U.S. 155, 66 L.Ed.2d 358, 101 S.Ct. 446 (1980)..... 2

STATUTES AND RULES

42 U.S.C. §1983 1
42 U.S.C. §1988 ..... 2, 3

No. 91-937

IN THE

Supreme Court of the United States

OCTOBER TERM, 1991

PETER S. STEIGERWALD,
Petitioner,
v.

ANITA RODEHEAVER, ET AL.,
Respondents

Petition For A Writ Of Certiorari To The Court Of Appeals For The Fourteen Court Of Appeals District Of Texas

PETITIONER'S REPLY BRIEF

Petitioner Peter S. Steigerwald replies to Respondents' brief in opposition to petition for writ of certiorari.

Respondents do not contest the rule that a local government unit's immunity to state claims cannot bar recovery under 42 U.S.C. §1983 et seq. They seek to avoid review of the Texas court's refusal to enforce Petitioner's federal rights solely because the Texas courts did not expressly address the federal claim, therefore no one will be the wiser and this Court should not aid the national ignorance. Respondents are wrong and this Court should come to Petitioner's aid, otherwise the guaranties of the Civil

Rights Act are an illlusory promise.

Beyond cavil, Petitioner pled and proved a civil rights action and insisted throughout that he was entitled to attorney's fees under 42 U.S.C. §1988. (Application for Writ Appendix 11a, 31a, 38a, 45a) The attorney's fees "go hand in hand" with the claim, *Kentucky v. Graham*, 473 U.S. 159, 165, 87 L.Ed.2d 114, 105 S.Ct. 3099, 3104 (1985), thus denial of attorney's fees to a prevailing party is a refusal to enforce federal rights.

The complaint clearly alerted Respondents that they were again committing under color of state statutes the same act condemned twice before by Texas courts as a deprivation of due process. *Sellers v. Harris County*, 483 SW2d 242 (Tex. 1972): "This result [of confiscating all interest earned on trust deposits] is untenable so long as private property is constitutionally protected." 483 SW2d at 243. *Harris County v. Wilkinson*, 540 SW2d 541 (Tex.Civ.App.-Houston [14th District] 1976, writ ref'd n.r.e.): "Harris County ... thus continues its efforts to avoid the thrust of *Sellers v. Harris County* ..." 540 SW2d at 542.

In light of those positive condemnations and this Court's decision in *Webb's Fabulous Pharmacies, Inc. v. Beckwith*, 449 US 155, 66 L.Ed.2d 358, 101 S.Ct. 446 (1980), Respondents are disingenuous in saying they did not have notice by the complaint that their conduct under color of Article 2558a, Vernon's Texas Civil Statutes, deprived Petitioner of rights protected by federal law.

It was unnecessary to try liability under the civil rights action pled because the trial court had granted a partial summary judgment on liability against Respondents prior to trial (App. 1a-3a). This summary judgment was affirmed upon Respondents' failure to present the appellate court with the record on summary judgment. (Application for Writ Appendix 18a-20a) Since the issue of liability was settled, there was no occasion to prove liability at trial.

The reason Petitioner filed Application for Writ with this Court is because the Texas courts did not sustain Petitioner's point that, irrespective of sovereign immunity, he was entitled to attorney's fees under 42 U.S.C. §1988. Refusal to sustain that ground is denial of relief due under federal law. It is only when state courts refuse to enforce federal rights that one can call upon this Court to compel enforcement. While the last opinion of the Court of Appeals refers to the fact that Petitioner contended for attorney's fees under the civil rights act (Application for Writ Appendix 26a), the holding of the court is that sovereign immunity barred recovery of attorney's fees. While failing to give due recognition to Petitioner's federal claim, the Texas court nevertheless denied it solely because of sovereign immunity. That holding conflicts with *Martinez v. California*, 444 US 27, 62 L.Ed.2d 481, 100 S.Ct. 553 (1980).

This Court "has an independent obligation to ascertain whether a judgment defeating the enforcement of federal rights rests upon a valid nonfederal ground" and it is this Court's duty to act where, in silence, a state court denies enforcement of a federal claim in substance and effect. *Howlett v. Rose*, _____ U.S. _____, 110 S.Ct. 2430, 2437, 110 L.Ed.2d 332 (1990). There is no valid excuse for the failure of the Texas courts to deny Petitioner's federal right. The Supremacy Clause commands that the Texas courts perform the duty of enforcing the right. Refusal to do so "flatly violates the Supremacy Clause." *Howlett v. Rose*, supra, 110 S.Ct. 2445.

CONCLUSION

Whether couched in terms of refusal to rule or outright denial, the result is the same. Petitioner has been denied entitlement to a federally protected right solely because of sovereign immunity. He prays the Court to grant his Petition for Writ of Certiorari.

Respectfully submitted,

C. CHARLES DIPPEL
1415 Louisiana, Suite 2550
Houston, Texas 77002
(713) 658-0808
(713) 658-8467 (Fax)

Attorney for Petitioner

CERTIFICATE OF SERVICE

A true copy hereof has been served upon Bert Crowther, attorney for respondents, via certified mail, return receipt, requested this _____ day of _____, 1991.

_____

C. CHARLES DIPPEL

No. 91-937

IN THE

Supreme Court of the United States

OCTOBER TERM, 1991

PETER S. STEIGERWALD,
Petitioner,
v.

ANITA RODEHEAVER, ET AL.,
Respondents

Petition For A Writ Of Certiorari To The Court Of Appeals For The Fourteen Court Of Appeals District Of Texas

APPENDIX

NO. 87-31986

IN THE DISTRICT COURT
OF HARRIS COUNTY, TEXAS
295TH JUDICAL DISTRICT

PETER S. STEIGERWALD, et. al.,
Plaintiffs,

v.

ORDER ON MOTION FOR PARTIAL SUMMARY JUDGMENT

ANITA RODEHEAVER, et. al.,
Defendants,

BE IT REMEMBERED that on the date of signing of this Order plaintiffs' motion for partial summary judgment was considered by the Court under submission. The Court concludes that plaintiffs are entitled to the partial summary judgment they seek upon undisputed facts. It is accordingly

WHEREAS, Section 4a of Article 2558a, V.T.C.S., and Article 1656a, V.T.C.S., as they existed during all times at controversy herein prior to their repeal and recodification in the Local Government Code, were held to be unconstitutional to the extent they permitted the County to appropriate interest earned on trust funds in excess of an amount reasonably related to the accounting and administrative expenses incurred by the County in handling the funds, in *Sellers v. Harris County*, 483 SW2d 242 (Tx. 1990). It is

ORDERED, ADJUDGED and DECREED that the sums of money deposited by condemnors in the registry of the Courts, subject to the order of the landowners therein, in the following cases:

Cause No. 428,274, Harris County Flood Control District v. R. C. Smith, in the County Civil Court at Law No. 4 of Harris County, Texas, and

Cause No. 443,959, City of Houston v. Peter S. Steigerwald, in the County Civil Court at Law No. 1 of Harris County, Texas,

were sums to which each of the respective landowners, plaintiffs herein, were entitled, and the judgments and orders in such cases establish plaintiffs' respective entitlement to the deposits so made and their ownership of such funds. It is

ORDERED, ADJUDGED and DECREED that interest earned on the monies deposited by the condemnors from the time of deposit with the depositories for trust funds held by the County Clerk until withdrawn by the respective plaintiffs herein accrued to the benefit of the respective plaintiffs herein and was owned by the respective plaintiffs herein. It is

ORDERED, ADJUDGED and DECREED that the County of Harris is liable to pay plaintiffs such sums of money as are determined at a trial on the issue of damages. It is

ORDERED, ADJUDGED and DECREED that each of the defendants herein is under a duty to forthwith and without further delay take all necessary lawful action to pay any final judgment in favor of plaintiffs herein. In that regard, the Clerk of this Court shall issue a writ of mandamus to each such defendant, commanding and

compelling each to act in terms of this judgment if the final judgment is not paid to plaintiffs on the first day after this Court's plenary jurisdiction over the case ends.

This order is interlocutory and shall not become final until merged into a final judgment.

SIGNED this 26th day of May, 1989.

/s/ Dan Downey
JUDGE DAN DOWNEY
JUDGE PRESIDING

APPROVED:

SEARS AND BURNS
55 Waugh Drive, Suite 400
Houston, Texas 77007
(713) 863-9601

By /s/ C. Charles Dippel
C. Charles Dippel (Bar No. 05891000)

Attorneys for Plaintiffs